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FEB 28 2011  
OFFICE OF PETITIONS

In re Patent No. 5,343,966  
Issue Date: September 06, 1994  
Application No. 07/898,003  
Filed: June 16, 1992  
Attorney Docket No. PROCHO-P40A-

: Paper No. 18  
: DECISION ON PETITION  
: :  
: :

This is a decision on the petition under 37 CFR 1.378(c), filed October 21, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

The above-identified patent issued on September 06, 1994. Therefore, the period set forth in 35 U.S.C. § 41(b) for paying the eleven and one-half year maintenance fee expired on September 06, 2006.

A petition under 37 CFR 1.378(c) must be filed within twenty-four months after the six month grace period specified in 35 USC 41(b). The six months grace period for the instant patent expired at midnight on September 06, 2006. Accordingly, an unintentional petition to reinstate the instant patent must have been submitted no later than September 06, 2008. Since the petition was not timely filed, the instant patent will not be considered for reinstatement under the unintentional provisions of 37 CFR 1.378(c).

35 U.S.C. § 41(c)(1) authorizes the Commissioner to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Commissioner to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Commissioner to accept a delayed maintenance fee payment later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable. Since the instant petition was not filed within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b), the Commissioner cannot accept a delayed maintenance fee payment for the above-identified patent under 37 CFR 1.378(c).

Should petitioner wish to pursue reinstatement of the above-identified patent on the basis of unavoidable delay, petitioner should file a petition under 35 U.S.C. § 41(c) and 37 CFR 1.378(b), which must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the

patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

It is noted that the petitioner authorized charge of \$9,210 to the deposit account. However, the Office has charged the Deposit Account an amount of \$5750 that includes the maintenance fee due of \$4110 and a surcharge of \$1640.

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund of the \$5750 charged to the deposit account. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

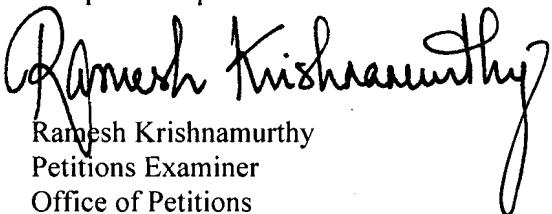
Further correspondence with respect to this matter should be addressed as follows:

By Mail: **Mail Stop PETITION**  
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By hand: **U. S. Patent and Trademark Office**  
Customer Service Window, Mail Stop Petitions  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Tredelle Jackson at 571-272-2783.

  
Ramesh Krishnamurthy  
Petitions Examiner  
Office of Petitions

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